

ANALYSIS

This ordinance amends the water pipeline franchise granted by Ordinance No. 2006-0044F to California-American Water Company, a California public utility corporation, to extend the term of the franchise for fifteen (15) years, through August 11, 2036, and make other minor revisions to clarify certain terms and conditions of the franchise.

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By

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HL:mv

Requested: 04/26/2021
Revised: 05/28/2021

ORDINANCE NO. _____

An ordinance amending Ordinance No. 2006-0044F, a water pipeline franchise granted to California-American Water Company, a California public utility corporation, to extend the term of the franchise for fifteen (15) years, through August 11, 2036, and make other minor revisions to clarify certain terms and conditions of the franchise.

The Board of Supervisors of the County of Los Angeles ordains as follows:

SECTION 1. Section 1 of Ordinance No. 2006-0044F is hereby amended to read as follows:

Section 1. Extension of Franchise Term; Grant.

A. The right, privilege, and franchise ~~is originally granted, on August 12, 2006,~~
~~for a period of fifteen (15) years,~~ to California-American Water Company, a California
public utility corporation ("Franchisee"), and its successors and assigns, is hereby
extended for an additional period of fifteen (15) years, beginning on from August 12,
~~2006~~21, the effective date of this franchise through August 11, 2036, to Under this
franchise, Franchisee may lay, construct, reconstruct, maintain, operate, renew, repair,
change the size of, remove, or abandon in place, pipes and pipelines for the
transportation and distribution of water, waste water, mud, steam, and other liquid
substances, ~~including those substances that are generally accepted as appropriate for~~
~~the treatment of water, (but~~ excluding any hazardous substances or hazardous waste
within the meaning of the "Comprehensive Environmental Response Compensation and
Liability Act of 1980," 42 U.S.C. § 9601 et seq., ~~and amendments thereto~~ as it may
hereafter be amended; the "Federal Water Pollution Control Act," 33 U.S.C. § 1251

et seq., as it may hereafter be amended; and the "Solid Water Disposal Act," 42 U.S.C. § 6901 et seq., as it may hereafter be amended, (provided, however, that ~~this~~these exclusions shall not apply to encompass such substances , if any, in such amounts that are generally accepted as appropriate for the treatment of water), together with all manholes, valves, cathodic protection systems, appurtenances, and service connections necessary or appropriate solely for the operation of said pipes or pipelines, including poles, conduits, wires, cables, ~~or including adjunct communications lines, and~~ other appurtenances and equipment for telegraph or telephone lines, or both, necessary or appropriate solely for the Franchisee's operations in, under, along, or across any and all highways as defined in Section 16.36.080 of the Los Angeles County Code, now or hereafter dedicated to public use within the unincorporated territory of the County of Los Angeles ("County"), State of California, for the Franchisee's water service areas in the unincorporated areas of Baldwin Hills (Ladera Heights and View Park-Windsor Hills), Duarte (South Monrovia Islands), and San Gabriel Valley (East Pasadena), as depicted on the maps attached hereto as Exhibit 1, Exhibit 2, and Exhibit 3 attached hereto, and any additional unincorporated territory of the County that may be added to the Franchisee's water service areas during the term of this franchise.

SECTION 2. Section 2 of Ordinance No. 2006-0044F is hereby amended to read as follows:

Section 2. Consideration; Payment of Fees.

A. As consideration for ~~the~~a franchise granted or extended, the Franchisee shall pay the County's Chief Administrative Office ("CAO") a one-time granting fee of

five thousand dollars (\$5,000) within thirty (30) days after the adoption of this amending ordinance.

...

C. In addition to the foregoing annual franchise fee, ~~the Franchisee~~ shall also pay:

1. The Los Angeles County Department of Public Works ("Public Works"), ~~Construction Division, Permit Section~~, within sixty (60) days after the end of each calendar year, for each year of the life of the franchise, an initial construction charge calculated at a rate of one hundred dollars (\$100) per mile, or fraction thereof, for all new main lines laid during that preceding calendar year.

...

SECTION 3. Section 3 of Ordinance No. 2006-0044F is hereby amended to read as follows:

Section 3. Reports.

~~The Franchisee~~ shall during the life of the franchise:

A. File with the County Auditor-Controller and ~~the CAO, Director of Real Estate~~ Public Works, on or before ~~each~~ the fee payment date, with one (1) copy to each, a report, verified under oath by a duly authorized representative of ~~the Franchisee~~, showing as of December 31 of the immediately preceding calendar year ("franchise report period"), the total gross receipts of ~~the~~ that Franchisee, for the immediately preceding franchise report period, received or accrued in connection with the furnishing of the commodity or service arising from the use or operation of the franchise, together

with such additional data as is necessary, in the opinion of the County Auditor-Controller and/or the ~~CAO, Director of Real Estate~~Public Works, to calculate or verify the calculation of the annual franchise fee as required by ~~S~~subsection 2.B.

B. Show in the report prepared pursuant to subsection 3.A. above, ~~Franchisee shall also show:~~ any change in franchise footage since the end of the most recent ~~prior~~ franchise report period, segregating such footage as to new main lines laid, old main lines removed, old main lines abandoned in place, including the internal diameter of such main lines laid, removed, and/or abandoned in place; the footage of new conduits laid for wires, cables, telegraph, or telephone lines, old conduits removed, old conduits abandoned in place; the diameter of such conduits laid, removed, and/or abandoned in place; and the footage and internal diameter of main lines in territory annexed or incorporated since the last day of the most recent ~~prior~~ franchise report period.

C. File with the ~~Director of the County Department of Public Works and the CAO, Director of Real Estate,~~ within sixty (60) days after the end of each franchise report period, with one (1) copy to each, on or before the fee payment date, a report showing the permit number of each permit obtained for the installation of new main lines and conduits during the ~~just~~most recently completed franchise report period, together with the length and size of such main lines and conduits.

...

SECTION 4. Section 5 of Ordinance No. 2006-0044F is hereby amended to read as follows:

Section 5. Indemnification, Insurance, and Bonding.

Franchisee shall meet the following indemnification, insurance, and bonding requirements:

...

C. Without limiting Franchisee's indemnification of the County or the County's agents, Franchisee shall provide and maintain at its own expense, during the term of this franchise, the following programs of insurance. Such programs and evidence of insurance shall be satisfactory to the County, and shall be primary to, and not contributing with, any other insurance or self-insurance programs maintained by the County.

1. Certificate(s), declaration page(s), specified endorsement(s), and/or other evidence of coverage satisfactory to the County shall be delivered to Public Works on or before the ~~effective~~operative date of this ~~franchise~~amending ordinance, and on or before the expiration date of each term of insurance, ~~to the Chief Administrative Office, Real Estate Division, Attn: Property Management Section, 222 South Hill Street, 3rd Floor, Los Angeles, California 90012, or such other address(es) as Franchisee may be directed in writing by the CAO to use.~~ Such certificates or other evidence shall:

...

d. Include a copy of the additional insured endorsement to the commercial general liability policy, adding the County and the County's agents as additional insureds for all activities arising from this franchise; and

...

D. Franchisee shall furnish the ~~CAO, Real Estate Division, at the location specified in subsection 5.C.4~~Public Works, within thirty (30) days of the ~~adoption~~operative date of this amending ordinance, and within thirty (30) days of the expiration date of each term of insurance, either certified copies of the policies required by subsection 5.C., or a certificate of insurance for each of said policies executed by the Franchisee's insurance agent, or by the company issuing the policy, certifying that the policy is in force.

E. As an alternative to commercial insurance from Franchisee, the County may consider and approve, at the County's sole option, Franchisee's use of a program of self-insurance or self-insured retention, ~~upon review and approval of~~subject to the following conditions:

1. ~~An agreement~~Franchisee shall to provide the County and the County's agents with indemnification in accordance with subsections 5.A. and 5.B. The County shall be provided at least the same defense of suits and payments of claims as would be provided by the commercial insurance policy described above, and without being subject to a deductible or self-insured retention.

2. Franchisee shall submit to the County Aa formal declaration by Franchisee to be self-insured for the same types and amounts of coverage indicated in this ordinance, subject to review and approval by the County. This can be in the form of a corporate resolution or a certified statement from an authorized principal of the Franchisee. Franchisee must notify the ~~CAO, Real Estate Division,~~Public Works at the

location specified in subsection 5.C.1, immediately of any discontinuation or substantial change in the self-insurance or self-insured retention program.

3. ~~An agreement~~Franchisee shall ~~to notify the CAO~~Public Works immediately of any claim, judgment, settlement, award, verdict, or change in Franchisee's financial condition ~~which~~that would have a significant negative effect on the protection that the self-insurance or self-insured retention program provides to the County.

4. Franchisee shall provide to Public Works ~~The~~ names, addresses, and telephone numbers of Franchisee's legal counsel and claim representative, respectively, for the self-insurance or self-insured retention program.

5. Upon request by the ~~CAO~~County, Franchisee shall submit to the County an audited financial statement that gives evidence of Franchisee's capacity to respond to claims falling within the self-insurance or self-retention program. Resubmission of such a statement may be required annually for the duration of the franchise, or more frequently, at the request of the ~~CAO~~County.

6. Franchisee shall submit to Public Works ~~A~~ Certificate of Consent to Self-Insure issued by the State of California, Department of Industrial Relations, certifying Franchisee's compliance with the requirements of the Director of Industrial Relations under the provisions of the Labor Code of the State of California (sections 3700 to 3705, inclusive) and certifying that Franchisee has furnished satisfactory proof to ~~said Director~~Public Works of Franchisee's ability to self-insure and to pay any compensation that may become due to Franchisee's employees.

...

F. Within thirty (30) days following the ~~adoption~~operative date of this amending ordinance, Franchisee shall provide to ~~the CAO, at the location specified in subsection 5.C.1, Public Works~~ a faithful performance bond in the sum of not less than fifty thousand dollars (\$50,000) payable to the County of Los Angeles and executed by a corporate surety, acceptable to the County and licensed to transact business as a surety in the State of California. Such bond shall be conditioned upon the faithful performance by ~~the Franchisee~~ of the terms and conditions of this franchise and shall provide that, in case of ~~any~~the breach of any condition of this franchise, the whole amount of the penal sum of fifty thousand dollars (\$50,000), or any lesser portion thereof, as determined solely by the County, shall be deemed to be liquidated damages, and shall be immediately payable to the County by the principal and surety(ies) of the bond.

...

2. The faithful performance bond shall continue to exist for one (1) year following the ~~CAO's~~County's approval of any sale, transfer, assignment, or other change of ownership of the franchise, or following the expiration or termination of the franchise. The ~~CAO~~County, in its sole discretion, may release said bond prior to the end of the one ~~(1)~~-year period upon satisfaction by Franchisee of all the obligations under the franchise.

...

...

SECTION 5. Section 6 of Ordinance No. 2006-0044F is hereby amended to read as follows:

Section 6. Transfers and Assignments.

A. Franchisee shall not sell, transfer (including stock transfer), exchange, assign, lease, ~~hypothecate, place in trust, or change the control~~ or divest itself of, the franchise or any part thereof (each of which is hereinafter referred to as an "aAssignment"); to any other person or entity ("~~the~~Transferee"), except with the prior written consent of the ~~CAO~~Director of Public Works or his/her designee ("Director"), and after payment of a transfer fee as detailed in subsection 6.G. As used in this ~~s~~Section, "transfer" includes stock transfer, ~~and "control" includes actual working control in whatever manner exercised.~~

B. Franchisee shall ~~give notice to the CAO~~inform Public Works of any pending aAssignment, except as excluded in subsection 6.E., and shall provide all documents requested by the ~~CAO~~County, as set forth in subsection 6.F., ~~on which the assignment is predicated.~~ Consent to any such aAssignment shall only be refused if the ~~CAO~~County finds that Franchisee is in noncompliance with the terms and conditions of the franchise and/or that the proposed ~~the~~Transferee, as applicable, is lacking in sufficient experience and/or is financially ability~~unable~~ to meet the franchise obligations. Consent ~~from the CAO~~ shall be conditioned upon: ~~(1) the terms and conditions set forth in the aAssignment documents delivered to the County;~~ ~~(2),~~ the assumption by the ~~the~~Transferee, as applicable, of all the Franchisee's covenants and obligations under the franchise; ~~and (3) all information provided to the CAO~~County under subsection 6.F.,

below, being true and correct as of the ~~actual date of transfer, except that the County~~
~~may waive minor changes and discrepancies in its sole discretion~~ completion of the
Assignment. Upon receipt of such consent from the CAO County, Franchisee may
proceed to consummate the aAssignment.

C. Franchisee shall file with the CAO County within thirty (30) days after the
effective date of any aAssignment, a certified copy of the duly executed instrument(s)
~~which~~ that officially evidence(s) such aAssignment. If any such duly executed
instrument(s) is not filed with the CAO County within thirty (30) days after the effective
date of such proposed aAssignment, or if ~~the~~ any conditions to consent by the
CAO County have not been met, ~~then the CAO County may, in its sole discretion,~~
determine, and then notify, the Franchisee and the proposed tTransferee that the
aAssignment is not deemed approved by the County. The CAO County may then
administratively determine that the assignment has no force or effect and/or that the
franchise is forfeited and the Board may repeal this franchise.

D. As a condition to granting consent to such aAssignment, the County may
impose, by ordinance, such additional terms and conditions upon this franchise and
upon the proposed tTransferee which the CAO recommends or as the Board deems to
be in the public interest. ~~Such additional terms and conditions shall be expressed by~~
~~ordinance. Nothing contained herein shall be construed to grant Franchisee the right to~~
~~complete an aAssignment except in the manner aforesaid. This section applies to any~~
~~assignment, whether by operation of law, by voluntary act of Franchisee, or otherwise.~~

...

F. Except for any Assignments made pursuant to subsection 6.E., Upon notice by Franchisee of any pending aAssignment, the proposed £Transferee shall submit an aAssignment application to the GAOCounty, which shall contain at a minimum:

...

2. A current financial statement, which has been audited by a certified public accountant, demonstrating conclusively to the satisfaction of the GAOCounty that the proposed £Transferee has all the financial resources necessary to carry out all of the terms and conditions of the franchise. The financial statement shall include a balance sheet, and a profit and loss statement for at least the three (3) most recent years, and a statement of changes in financial position; however, if the proposed £Transferee has been in existence for less than three (3) years, then for such period of existence;

...

4. Other information ~~which~~that may be required by the GAOCounty to assess the capability of the proposed £Transferee to operate and maintain the franchise.

G. The transfer fee shall be submitted with ~~the~~Franchisee's request for the County's consent to any aAssignment described in subsection 6.A., and shall be determined as follows:

1. Consent to aAssignment or any other action, in which the County does not elect to modify the franchise by adoption of an amending ordinance: ~~one~~five thousand dollars (\$45,000).

2. Consent to ~~a~~Assignment or any other action, in which the County elects to modify the franchise by adoption of an amending ordinance: ~~two~~seven thousand five hundred dollars (\$~~2~~7,500).

3. In the event that the County's actual costs to process the proposed ~~a~~Assignment application, including any consultant's fees incurred by the County to assist in evaluating the application, exceed the fees detailed above, ~~the~~ Franchisee and the proposed ~~€~~Transferee may be required to pay any additional costs incurred by the County in processing the ~~Franchisee's and/or proposed transferee's~~ request for ~~a~~Assignment. Such costs shall be paid by ~~the~~ Franchisee and the proposed ~~€~~Transferee, or either, prior to final consideration of the request by the ~~CAO~~County or the Board, as applicable.

SECTION 6. Section 9 is hereby added to Ordinance No. 2006-0044F to read as follows:

Section 9. County Addresses.

All fees, payments, and reports required hereunder, except those expressly directed to be sent to Public Works, shall be sent to the County and addressed as follows:

Franchise/Concessions Section
County of Los Angeles
Office of the Auditor-Controller
Administrative Services, Room 410
500 West Temple Street,
Los Angeles, California 90012-2713

Applications, reports, notices, and other documents and information referenced in this franchise shall be sent to the County, at the same address referenced above, with a copy to:

Los Angeles County Public Works
Attn: Survey/Mapping & Property Management Division
900 South Fremont Avenue
Alhambra, California 91803

SECTION 7. Section 10 is hereby added to Ordinance No. 2006-0044F to read as follows:

Section 10. Amending Ordinance Operative Date.

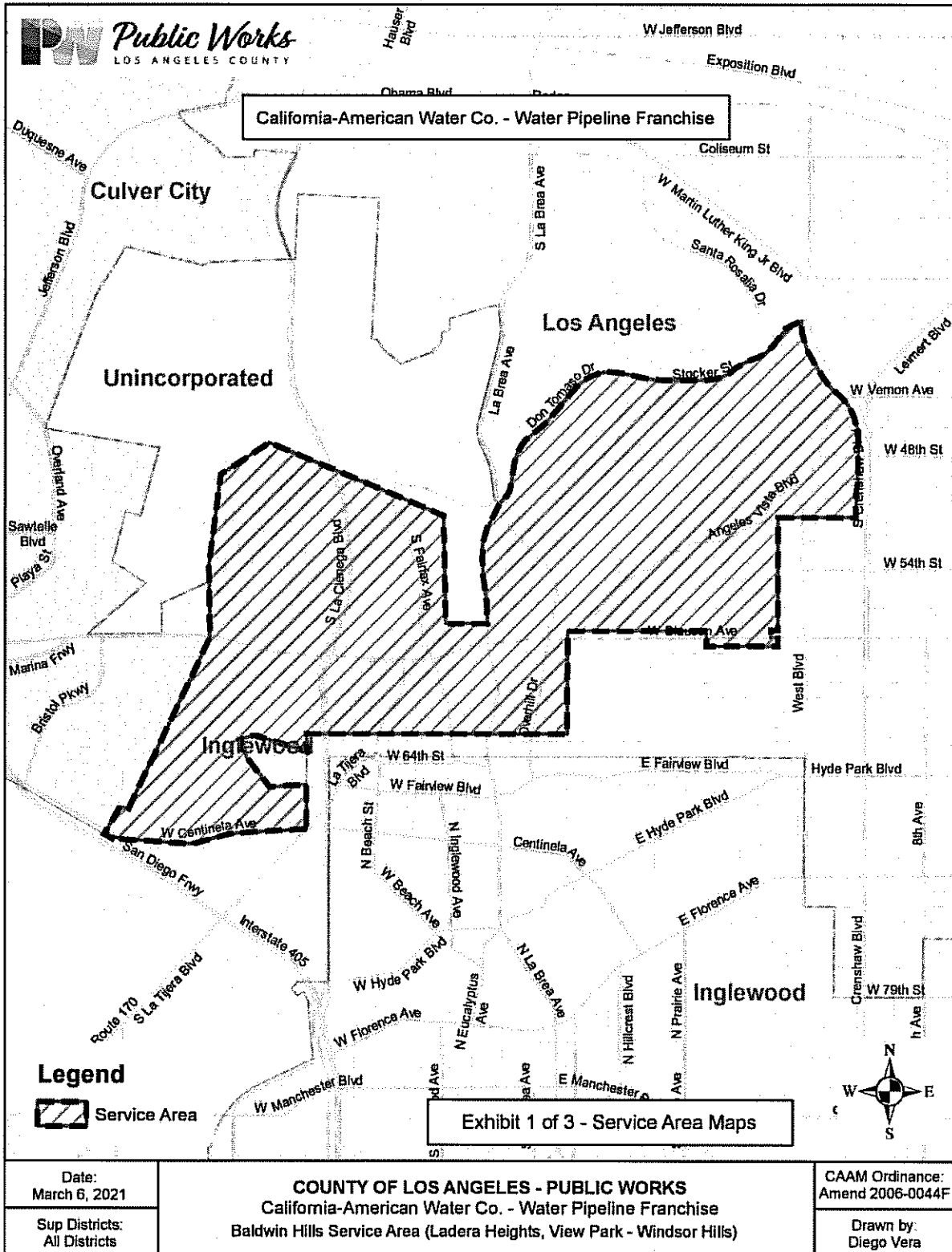
The operative date of this amending ordinance shall be August 12, 2021.

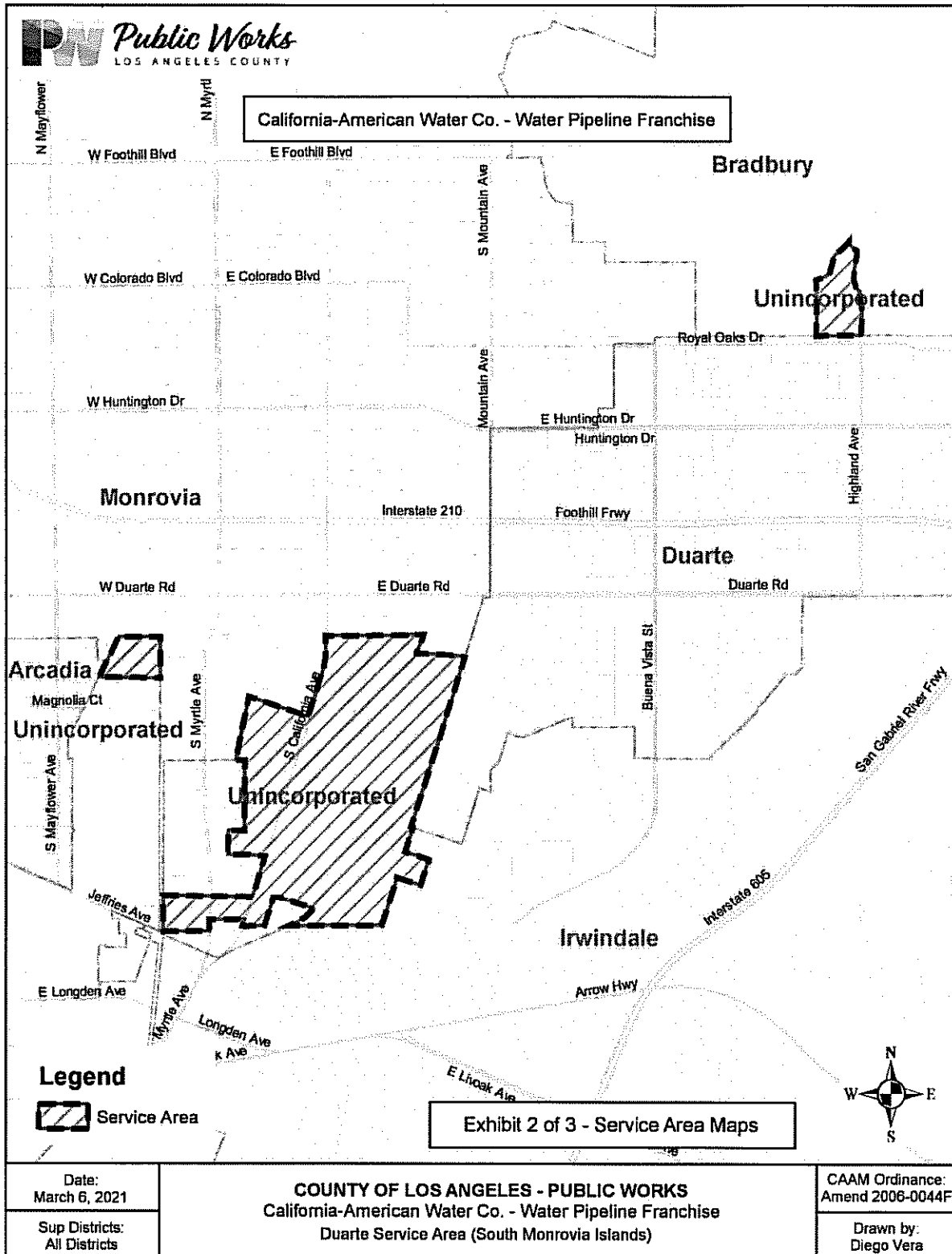
SECTION 8. Section 11 is hereby added to Ordinance No. 2006-0044F to read as follows:

Section 11. Termination.

If Franchisee fails to comply with any of the requirements of the franchise, the County may, in its sole discretion, terminate the franchise and/or seek any and all available remedies at law or in equity.

[CALAMERICANWTRCOMPFLCC]





Date:
March 6, 2021

Sup Districts:
All Districts

COUNTY OF LOS ANGELES - PUBLIC WORKS
 California-American Water Co. - Water Pipeline Franchise
 Duarte Service Area (South Monrovia Islands)

CAAM Ordinance:
Amend 2006-0044F

Drawn by:
Diego Vera

